IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

I.T.R. No.90 of 1987
Date of decision: 19.09.2006

The Commissioner of Income Tax, Patiala.

-----Applicant

Vs.

The Punjab Financial Corporation, Chandigarh.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.K. Garg Narwana, Advocate, for the revenue.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 31.03.1986 in I.T.A. No.252/Chandi/84 in respect of assessment year 1979-80:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing credit tax deduction at source in respect of dividends earned by the State Government to the assessee"?

We find that the matter is covered by earlier order of this Court dated 2.9.2004 in I.T.R. No.6 of 1985 '***The Commissioner of Income-tax, Patiala*** **v.** ***M/s Punjab Financial Corporation, Chandigarh***, wherein, it was observed:-

> "From a perusal of the order of the Tribunal, it is clear that no tax was deductible at all the on the portion of dividend diverted to the State Government as it is not assessable under the Income-tax Act. The entire tax deducted at source clearly pertains to the dividend payable to the assessee and it has been found as a fact that the entire burden of this amount had fallen on the assessee-Corporation. The Tribunal has taken a possible view which, in our opinion, is the correct view in the facts and circumstances of the case. At any rate, it is quite evident that even if the Revenue were to succeed, the balance amount would still be refundable as no tax was deductible on the dividend payable to the State Government. Since the burden had been fully borne by the assessee, such refund would also go back to the assessee. Thus, the whole exercise would be an exercise in futility."

Following the above order, we answer the question referred against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

September 19, 2006
ashwani

(RAJESH BINDAL)
JUDGE